

ITEM NO. 1

## STAFF REPORT

DATE: SEPTEMBER 20, 2011  
TO: AGENCY CHAIR AND BOARD MEMBERS  
FROM: ROD FOSTER, EXECUTIVE DIRECTOR  
PREPARED BY: ARTHUR W. MORGAN, REDEVELOPMENT MANAGER  
SUBJECT: ADOPTION OF RESOLUTION APPROVING AND ADOPTING THE PRELIMINARY DRAFT OF THE INITIAL RECOGNIZED OBLIGATION PAYMENT SCHEDULE PURSUANT TO AB 1X 26

### RECOMMENDED ACTION

It is recommended that the Agency Board adopt Resolution No. 894 approving a preliminary draft of an initial Recognized Obligation Payment Schedule ("ROPS"), and authorize the Executive Director to transmit the initial draft ROPS to the successor agency in accordance with Assembly Bill 1X 26, and at the Executive Director's discretion submit the draft ROPS to the State Department of Finance.

### GOAL STATEMENT

The proposed action will allow the Agency to continue to abide by the effective provisions of Assembly Bill 1X 26 that have not been stayed, pending the California Supreme Court determining the legality of Assembly Bill 1X 26 and Assembly Bill 1X 27.

### BACKGROUND

On June 28, 2011, as part of the 2011-2012 State of California budget bill, companion bills Assembly Bill 1X 26 ("AB 26") and Assembly Bill 1X 27 ("AB 27") were enacted. AB 26 would dissolve the Agency, unless the City adopts an ordinance to participate in the "Alternative Voluntary Redevelopment Program" established by AB 27 and pays an annual "community remittance" payment to the County of San Bernardino. On July 18, 2011, a Petition for Writ of Mandate was filed in the Supreme Court of the State of California in the matter of *California Redevelopment Association, et al. v. Ana Matosantos, et al.*, Case No. 5194861 ("Legal Action"), challenging the constitutionality of AB 26 and AB 27 on behalf of cities, counties and redevelopment agencies and requesting a stay of enforcement of AB 26 and AB 27, pending the Supreme Court's determination of the legality of AB 26 and AB 27. On August 11, 2011, the Supreme Court issued an order in the Legal Action granting a partial stay of AB 26, exclusive of Health and Safety Code Sections 34161 through 34167 (which prohibit new redevelopment activity), and a complete stay of AB 27, such that the City and the Agency cannot currently pursue new redevelopment activity under the Alternative Voluntary Redevelopment Program (collectively, "Stay"). On August 17, 2011, the Supreme Court modified the Stay reactivating

Health and Safety Code Sections 34167.5 through 34169.5 (requiring the adoption of the Enforceable Obligation Payment Schedule), in addition to Health and Safety Code Sections 34161 through 34167, and also reactivating Health and Safety Code Section 34194(b)(2) (regarding calculation of the community remittance payment).

## **ISSUES/ANALYSIS**

Health and Safety Code Section 34169(h), which is no longer subject to the Stay, requires redevelopment agencies to prepare a preliminary draft of an initial ROPS by September 30, 2011. Depending on the outcome of the litigation, the ROPS may eventually serve as the basis for the payment of the Agency's outstanding financial obligations by the Agency's successor agency if the Agency is dissolved. Like the Enforceable Obligation Payment Schedule, the ROPS must set forth the enforceable obligations of the Agency that will be payable by the successor agency, and any obligation not listed in the ROPS will not be payable. This preliminary draft of the ROPS prepared by the Agency may serve as the model from which the successor agency will draft the final version of the ROPS.

Health and Safety Code Section 34169(i) appears to allow the Agency to submit the preliminary draft ROPS to the State Department of Finance, although submittal to the State Department of Finance is not an express requirement. Following submittal of the preliminary draft ROPS, the State Department of Finance has three business days to object to the preliminary draft ROPS. Staff is reviewing the merits of submitting the preliminary draft ROPS to the State Department of Finance and is recommending that such submittal be at the discretion of the Agency Executive Director, once fully vetted.

Health and Safety Code Section 34177, although not effective due to the Stay, sets forth the required provisions of the ROPS. The preliminary draft of the ROPS must list all of the "enforceable obligations" of the Agency, the minimum amounts and due dates of payments required by each enforceable obligation for the six month period beginning January 1, 2012 and ending June 30, 2012 and identify one or more of the following sources of payment for each enforceable obligation: (1) Low and Moderate Income Housing Fund; (2) bond proceeds; (3) reserve balances; (4) administrative cost allowance; (5) Redevelopment Property Tax Trust Fund, but only to the extent no other funding source is available or when payment is required from property tax revenues; or (6) other revenue sources, including rents, concessions, asset sale proceeds, interest earnings and other revenues. For purposes of the ROPS, "enforceable obligations" are the same obligations as those listed on the Agency's "Enforceable Obligation Payment Schedule" that was recently adopted, exclusive of: (a) agreements or arrangements between the Agency and the City, except that agreements entered into between the Agency and the City on or before December 31, 2010 solely for the purpose of securing or repaying indebtedness obligations of the Agency to third parties (i.e. bonds, notes, COPs, etc.) and loan agreements entered into between the Agency and the City within two (2) years of the date of creation of the Agency may be deemed enforceable obligations for purposes of the ROPS; and (b) contracts or agreements between the Agency and other public agencies regarding performance of services or funding for governmental or private services or capital projects

outside of redevelopment project areas that do not provide benefit to the redevelopment project. The ROPS will also be subject to approval by an oversight board that may eventually be established for the wind-up of the Agency's affairs, the County of San Bernardino Auditor-Controller, the State of California Controller, and the State of California Department of Finance.

The initial draft of the ROPS must also include, from October 1, 2011, a schedule showing all of the dates and amounts of payments for each enforceable obligation for the remainder of the time during which the redevelopment agency is authorized to obligate property tax increment (the earlier of the last date to incur indebtedness or termination of redevelopment plan effectiveness).

### **FISCAL IMPACTS**

There is no fiscal impact associated with the recommended item.

### **ALTERNATIVES**

The Agency Board may wish to consider the following alternatives:

1. Provide alternative direction to staff.

### **ATTACHMENT**

- (1) Resolution No. 894
- (2) Preliminary Draft Initial Recognized Obligation Payment Schedule

## **RESOLUTION NO. 894**

### **A RESOLUTION OF THE REDEVELOPMENT AGENCY FOR THE CITY OF COLTON APPROVING AND ADOPTING THE PRELIMINARY DRAFT OF THE INITIAL RECOGNIZED OBLIGATION PAYMENT SCHEDULE PURSUANT TO AB 1X 26**

**WHEREAS**, the City Council of the City of Colton (“City”) currently has five effective redevelopment projects: (1) the Cooley Ranch Redevelopment Project (adopting Ordinance No. 1478, dated July 29, 1975); (2) the Santa Ana River Redevelopment Project (adopting Ordinance No. 1632, dated December 29, 1982); (3) the West Valley Redevelopment Project (adopting Ordinance No. O-10-86, dated July 15, 1986 and its amendment adopting Ordinance No. O-9-87, dated June 30, 1987); (4) the Mt. Vernon Corridor Redevelopment Project (adopting Ordinance No. O-8-87, dated June 30, 1987); and (5) the Rancho/Mill Redevelopment Project (adopting Ordinance No. O-13-94, dated July 5, 1994) (collectively and as amended, the “Project Areas”); and

**WHEREAS**, the Redevelopment Agency for the City of Colton (“Agency”) has been engaged in activities to redevelop the Project Areas pursuant to the provisions of the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.); and

**WHEREAS**, continued redevelopment of the Project Areas to eliminate blight, improve public facilities and infrastructure, renovate and construct affordable housing, and enter into partnerships with private industries to create jobs and expand the local economy is vital to the health, safety and welfare of the City; and

**WHEREAS**, on June 28, 2011, the State of California enacted California Health and Safety Code Section 34161 et seq. as part of the State’s enactment of Assembly Bill 1X 26 (“AB 1X 26”), immediately prohibiting further redevelopment activity by redevelopment agencies and dissolving all redevelopment agencies in the State of California on October 1, 2011; and

**WHEREAS**, on June 28, 2011, the State of California also enacted California Health and Safety Code Section 34192 et seq. under Assembly Bill 1X 27 (“AB 1X 27”), providing communities the opportunity to continue redevelopment activity through their local redevelopment agencies by electing to participate in the “Alternative Voluntary Redevelopment Program”; and

**WHEREAS**, on July 18, 2011, a Petition for Writ of Mandate was filed in the Supreme Court of the State of California in the matter of *California Redevelopment Association, et al. v. Ana Matosantos, et al.*, Case No. 5194861 (“Legal Action”), challenging the constitutionality of California Health and Safety Code Section 34161 et seq., and California Health and Safety Code Section 34192 et seq., on behalf of cities, counties and redevelopment agencies and requesting a stay of enforcement of California Health and Safety Code Section 34161 et seq., and California Health and Safety Code Section 34192 et seq., pending the Supreme Court’s determination of the constitutionality of AB 1X 26 and AB 1X 27; and

**WHEREAS**, on August 11, 2011, the Supreme Court issued an order in the Legal Action granting a partial stay of California Health and Safety Code Section 34161 et seq., exclusive of California Health and Safety Code Sections 34161 through 34167 (which suspend all new redevelopment activity), and a complete stay of California Health and Safety Code Section 34192 et seq., such that the City and the Agency cannot currently pursue new redevelopment activity under the Alternative Voluntary Redevelopment Program (collectively, "Stay"); and

**WHEREAS**, on August 17, 2011, the Supreme Court modified the Stay such that the Stay no longer affects California Health and Safety Code Sections 34167.5 through 34169.5, in addition to California Health and Safety Code Sections 34161 through 34167, or California Health and Safety Code Section 34194(b)(2); and

**WHEREAS**, Health and Safety Code Section 34169(h) requires redevelopment agencies to prepare, by September 30, 2011, a preliminary draft of the initial Recognized Obligation Payment Schedule ("ROPS").

**NOW, THEREFORE, BE IT RESOLVED** by the Redevelopment Agency for the City of Colton, as follows:

**Section 1. Recitals.** The Recitals set forth above are true and correct and incorporated herein by reference.

**Section 2. Approval and Adoption of ROPS.** The Agency hereby approves and adopts the preliminary draft of the initial ROPS, in substantially the form attached hereto as Exhibit A, as required by Health and Safety Code Section 34169(h).

**Section 3. Future Action.** The Agency hereby authorizes the Agency Executive Director, or his or her designee, to provide the preliminary draft of the initial ROPS to the Agency's successor agency, if the Supreme Court's stay is lifted or modified in a manner that permits a successor agency to be established for the Agency pursuant to Part 1.85 to Division 24 of the Health and Safety Code, enacted by AB 1X 26. Further, the Agency hereby authorizes the Agency Executive Director, in his discretion, to submit the initial ROPS to the State Department of Finance pursuant to Health and Safety Code Section 34169(i).

**Section 4. Certification.** The Agency Secretary shall certify to the adoption of this Resolution.

**Section 5. Effective Date.** This Resolution shall become effective upon its adoption.

**APPROVED AND ADOPTED** this 20<sup>th</sup> day of September, 2011.

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Sarah S. Zamora  
Chairperson

Redevelopment Agency for the City of Colton

ATTEST:

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Eileen Gomez, CMC  
Secretary  
Redevelopment Agency for the City of Colton

STATE OF CALIFORNIA )  
COUNTY OF SAN BERNARDINO )ss.  
CITY OF COLTON )

I, Eileen Gomez, CMC, Secretary to the Redevelopment Agency for the City of Colton, do hereby certify that the foregoing Resolution of the Redevelopment Agency for the City of Colton approving and adopting the preliminary draft of the initial Recognized Obligation Payment Schedule was duly adopted by the Redevelopment Agency for the City of Colton at a regular meeting of the Redevelopment Agency for the City of Colton, held on the 20<sup>th</sup> day of September, 2011, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Dated: \_\_\_\_\_

Eileen Gomez, CMC  
Secretary  
Redevelopment Agency for the City of Colton

EXHIBIT A

RECOGNIZED OBLIGATION PAYMENT SCHEDULE



**Initial Draft RECOGNIZED OBLIGATION PAYMENT SCHEDULE**  
**Per AB 26 - Section 34169 (\*)**

[illegible]

## OTHER OBLIGATION PAYMENT SCHEDULE

[illegible]